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October 16, 2009

VIA TELEFAX

The Honorable Paul S. Diamond United States District Court for the Eastern District of PA U.S. Courthouse, Room 6613 601 Market Street Philadelphia, PA 19106



RE: Maximino M. Estrada, individually and as administrator of the Estate of Yolanda A. Carias-Santos v. Home Depot U.S.A., Inc., et al. U.S.D.C., E.D. Pa.; Civil Action No. 08-CV-4367

Harleysville Mutual Insurance Company v. Home Depot U.S.A., Inc. U.S.D.C., E.D. Pa.; Civil Action No. 09-CV-3782

Dear Judge Diamond:

In response to Your Honor's request for the position of Defendant, Home Depot U.S.A., Inc. ("Home Depot"), to the motion to intervene filed by Harleysville Mutual Insurance Company ("Harleysville"), relative to the first of the above-captioned matters, Home Depot is hoping that Harleysville will withdraw the petition for the following reasons.

18/15/2009 13:Case 5:08-cv-04367-PD Document 99 Filed 10/20/09 Page 2 of 4

The Honorable Paul S. Diamond October 16, 2009 Page 2

One, defense counsel in the underlying action have been working diligently in assembling several tiers of jury interrogatories, the first to resolve Plaintiff's claims and the apportionment of damages, assuming same are awarded, between the respective Defendants. In doing so, we believe the second tier of jury interrogatories to address the indemnification claims will include inquiries Harleysville wants addressed in which instance Harleysville's concerns should be assuaged.

Two, in the event Harleysville is unwilling to withdraw its petition. Home Depot will oppose same minimally on two (2) grounds:

- (a) The intervention is sought to address issues raised in the declaratory judgment action (the second of the above-captioned matters) which has been stayed per Your Honor's Order dated September 14, 2009; thus, no further action with respect to same, including the relief sought in Harleysville's instant petition, ought be pursued; and,
- (b) Had the declaratory judgment action not been stayed, Home Depot would have filed a motion to disqualify Harleysville's counsel, William T. Salzer. Esquire and his firm, Swartz Campbell LLC, as that firm has served as Home Depot's counsel in the past and has been involved, incident to said representation, in addressing indemnification, defense tender and insurance coverage issues for and on behalf of Home Depot. In light of the stay, the motion was not filed; however, if Harleysville's instant motion is to be pursued by Mr. Salzer, Home Depot will have to address that issue now.

In light of the foregoing, we are hoping to resolve the issues raised in Harleysville's motion without further burden upon the Court. If, however, Home Depot elects to respond to the motion, we are respectfully requesting that we be afforded until October 23, 2009 within which to file Home Depot's response.

10/16/2009 13:64 2159727000 Document 99 Filed 10/20/09 Page 3 of 4

The Honorable Paul S. Diamond October 16, 2009 Page 3

Thank you for your courtesy and consideration in this regard.

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KEKNETH M. DUBROW

KMD:tlj

cc: Jesse Pleet, Esquire (via telefax)

Frederick T. Lachat, Jr., Esquire (via telefax) Tiffany M. Alexander, Esquire (via telefax) William T. Salzer, Esquire (via telefax)

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October 16, 2009

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The Honorable Paul S. Diamond

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FROM:

Kenneth M. Dubrow, Esquire

RE:

Estrada v. Home Depot, et al.

Number of pages including this cover page: 14

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